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CALIFORNIA: A NEW GOLDEN HUB OF INTERNATIONAL COMMERCIAL ARBITRATION?

Tiffany Luu*

I. INTRODUCTION

California opened its golden gates to international commercial arbitration (“ICA”) by passing California Senate Bill 766 (“SB 766”),¹ which fully unlocked foreign and out-of-state attorneys’ ability to participate in ICAs within California.² But this is just one step in helping California reach its full potential as an internationally recognized hub of ICA.

The use of ICA to resolve transnational commercial disputes has continually increased over the last twenty years.³ ICA is a method of resolving disputes that arise out of commercial transactions between private parties across national borders, allowing the disputing parties to avoid litigating their disputes in foreign national courts.⁴ The International Bar Association (“IBA”) reported in 2015 that arbitration has grown as the preferred means of resolving international disputes within the United States because it provides numerous advantages, such as the enforceability of foreign arbitral awards; the availability of privacy and confidentiality; and the ability of parties to choose the decision-makers, seat of arbitration, arbitration rules, and

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¹ See S.B. 766, 2017–2018 Leg. (Cal. 2018).

² Drew Holiner & William Hooper, *California: A Golden Opportunity for International Arbitration?*, PRAC. L. ARB. BLOG (Aug. 16, 2018), <http://arbitrationblog.practicallaw.com/california-a-golden-opportunity-for-international-arbitration>.

³ Gonzalo Vial, *Influence of the Arbitral Seat in the Outcome of an International Commercial Arbitration*, 50 INT’L LAW. 329, 330 (2017).

⁴ *Id.* at 329.

applicable law.⁵ As a result, several cities and states have endorsed themselves as attractive forums in attempts to economically benefit from the international legal industry and attract international commerce.⁶ Businesses agreeing to arbitrate carefully select the seat of arbitration because of the practical and legal consequences stemming from the seat selection.⁷

Despite being the largest economy in the United States and the fifth-largest in the world,⁸ California's popularity as a venue of international arbitration lags far behind other international and domestic locations such as London, Geneva, Singapore, and New York.⁹ Before SB 766 was passed, California did not explicitly authorize out-of-state and foreign attorneys to provide international arbitration services in California.¹⁰ These rules on foreign and out-of-state attorney representation are commonly referred to as Fly-In Fly-Out ("FIFO") rules.¹¹ Although California's strict FIFO rule protected the ethical integrity of the practice of law in California, it also negatively impacted California's ability to attract foreign businesses into choosing California as the location to arbitrate their international commercial disputes.¹² Foreign parties to international commercial agreements and their attorneys actively sidestepped California and selected arbitral seats in jurisdictions with more inclusive FIFO rules that allow foreign attorney representation.¹³ Many critics viewed California's strict FIFO rule as one of the main reasons that California was not a popular seat of ICA.¹⁴ California's strict FIFO rule was not in line with the requirements of leading arbitral seats, such as London, Geneva, Singapore, New York, and Florida, which all have more lenient FIFO rules.¹⁵ SB 766 lifted the ban on foreign legal representation with an inclusive FIFO rule, and the international arbitration community widely praised California's shift towards an arbitration-friendly stance.¹⁶

⁵ INT'L BAR ASS'N ARB. 40 SUBCOMM., THE CURRENT STATE AND FUTURE OF INTERNATIONAL ARBITRATION: REGIONAL PERSPECTIVES 36 (2015) [hereinafter IBA REGIONAL PERSPECTIVES].

⁶ Vial, *supra* note 3, at 331.

⁷ *Id.* at 333. For example, parties that choose a jurisdiction that is not a party to the New York Convention could prevent the foreign arbitral award from being recognized and enforced in a different country. *Id.* at 336.

⁸ Kieran Corcoran, *California's Economy is Now the 5th-Biggest in the World, and Has Overtaken the United Kingdom*, BUS. INSIDER (May 5, 2018, 4:09 AM), <https://www.businessinsider.com/california-economy-ranks-5th-in-the-world-beating-the-uk-2018-5>.

⁹ DANIEL M. KOLKEY ET AL., CAL. SUPREME COURT INT'L COMMERCIAL ARBITRATION WORKING GRP., REPORT & RECOMMENDATIONS 15 (Apr. 10, 2017).

¹⁰ Richard Chernick & Howard B. Miller, *California is Missing Out on International Arbitration Business*, DAILY J. (Feb. 9, 2018), <https://www.dailyjournal.com/articles/346023-california-is-missing-out-on-international-arbitration-business>.

¹¹ KOLKEY ET AL., *supra* note 9, at 15.

¹² See Chernick & Miller, *supra* note 10.

¹³ *Id.*

¹⁴ See, e.g., Patrick T. Byrne, *California – The Next Major International Arbitration Seat?*, KLUWER ARB. BLOG (July 25, 2017), <http://arbitrationblog.kluwerarbitration.com/2017/07/25/california-next-major-international-arbitration-seat/>.

¹⁵ KOLKEY ET AL., *supra* note 9, at 40.

¹⁶ See, e.g., Holiner & Hooper, *supra* note 2.

This article will explore the SB 766's impact on ICA within California and will propose initiatives to help California ascend in the list as a preferred seat of ICA. Part II provides the background context of ICA and its use in California. Part III explores the benefits of increasing the use of ICAs seated in California. Part IV suggests ways lawyers and the legal arbitration community can assist in making California a more attractive seat of ICA among international and domestic jurisdictions. Finally, Part V concludes by describing the effect that SB 766 and proposed initiatives will have on ICA in California.

II. BACKGROUND

International arbitration is the most preferred dispute resolution method for resolving cross-border commercial disputes.¹⁷ International arbitration is commonly seen as the only international dispute resolution process that consistently produces fair, impartial, and effective adjudication, regardless of the dispute's location.¹⁸ ICA is preferred over litigation because of its valuable characteristics, such as the parties' ability to successfully enforce arbitral awards in foreign jurisdictions and to avoid specific national courts; parties' choice, especially to select neutral arbitrators; and confidentiality and privacy.¹⁹ This section will discuss the nature of ICA and California's history of ICA and its FIFO rules.

A. Nature of ICA

i. What is International Commercial Arbitration?

To understand what international commercial arbitration is, it is helpful to break down each component. Arbitration is a method of resolving disputes, where parties in conflict submit their disputes to an arbitrator who is the neutral decision-maker.²⁰ The arbitrator listens to the disputing parties, considers the facts of the dispute and their arguments, and makes a decision in the form of an arbitral award that is final and binding on the parties.²¹ The term "international" is used to differentiate arbitrations that in some way transcends national borders because of the dispute's

¹⁷ QUEEN MARY UNIV. OF LONDON AND WHITE & CASE LLP, 2018 INTERNATIONAL ARBITRATION SURVEY: THE EVOLUTION OF INTERNATIONAL ARBITRATION 5 (2018), <https://www.whitecase.com/sites/whitecase/files/files/download/publications/qmul-international-arbitration-survey-2018-18.pdf> [hereinafter 2018 INTERNATIONAL ARBITRATION SURVEY]. In 2018, international arbitration was preferred by a staggering 97% of survey respondents, whom included private practitioners, full-time arbitrators, in-house counsel, experts, and other stakeholders. *Id.* This is a 7% increase from the 2015 survey respondents. *Id.*

¹⁸ IBA REGIONAL PERSPECTIVES, *supra* note 5, at 36.

¹⁹ 2018 INTERNATIONAL ARBITRATION SURVEY, *supra* note 17, at 7.

²⁰ NIGEL BLACKABY ET AL., REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION 2 (6th ed. 2015).

²¹ *Id.* at 2.

nature, parties' nationalities, or parties' selection of a neutral legal and physical place to hold the proceedings.²² The term "commercial" refers to the transactional nature of the dispute's subject matter, which often includes trade transactions for exchange of goods or services, distribution agreements, engineering, investment, financing, and business co-operation.²³ Thus, international commercial arbitration involves disputes that arise out of commercial transactions between private parties across national borders, where an arbitrator makes a final and binding decision regarding the issues of the dispute in the form of an arbitral award.²⁴ There are many different relevant laws that govern California-based ICAs.

ii. Relevant Laws Governing California-Based ICA's and the Parties' Right to Legal Representation

In the United States, an interplay of international law, federal law, and state law govern ICAs and the parties' right to legal representation in those proceedings.²⁵ The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly known as the "New York Convention") is an international treaty that addresses "the recognition and enforcement of commercial arbitration agreements in international contracts."²⁶ The 159 signatory countries to the New York Convention, including the United States, have agreed to recognize and enforce commercial arbitral awards made in other signatory countries, subject to specific grounds of refusal.²⁷ Although the New York Convention does not expressly reference the parties' right to legal representation, practitioners argue that Articles II(1), II (3), and V(1)(b) of the Convention indirectly forbid states from denying parties the right to representation by persons of their own choice in international arbitral proceedings.²⁸

The United States has a federal policy favoring arbitration as a dispute resolution mechanism, especially to agreements to arbitrate in international transactions.²⁹ Federal arbitration law is primarily established in the Federal Arbitration Act ("FAA"), which governs arbitrations conducted within the United States.³⁰ The FAA

²² BLACKABY ET AL., *supra* note 20, at 7; see CAL. CIV. PROC. CODE § 1297.13 (West 1988) (specifying the circumstances under which an arbitration agreement is considered "international").

²³ BLACKABY ET AL., *supra* note 20, at 12; see CAL. CIV. PROC. CODE § 1297.16 (West 1988) (defining an arbitration agreement as "commercial" if it arises out of a relationship of a commercial nature).

²⁴ Vial, *supra* note 3, at 329.

²⁵ Mark R. Joelson, *The Interplay of International, Federal and State Law in US Arbitration*, 24 J. INT'L ARB. 379, 379 (2007).

²⁶ *Id.* at 381.

²⁷ *Id.* at 381.

²⁸ See GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION 2833, 2840 (2nd ed. 2014).

²⁹ Catherine M. Amirfar et al., *National Report for the United States of America (2018)*, in ICCA INTERNATIONAL HANDBOOK ON COMMERCIAL ARBITRATION 1 (Jan Paulsson & Lise Bosman eds., 2018 ed. 1984).

³⁰ *Id.* at 2. Chapter Two of the FAA implements the New York Convention. *Id.*

does not expressly speak to the parties' rights to legal representation in ICAs.³¹ Instead, the practice of law within the United States is mostly governed by the individual states and their professional responsibility rules.³²

California has two state statutes that govern arbitrations—the California Arbitration Act that applies to arbitration generally, and the California International Commercial Arbitration and Conciliation Act (“CIACA”) that applies to ICAs.³³ CIACA is based upon the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (“Model Law”), which ICA practitioners consider “the gold standard in arbitration legislation.”³⁴ CIACA aimed to attract foreign nationals to arbitrate their international commercial disputes in California according to accepted international standards.³⁵ Before January 1, 2019, California had strict FIFO rules for out-of-state lawyers and foreign lawyers.³⁶

In contrast, most states have lenient FIFO rules for *out-of-state lawyers* that are consistent with the American Bar Association’s (“ABA”) Model Rules of Professional Conduct, which allows lawyers admitted in one state to represent clients in ICAs seated in other states.³⁷ Several states—including New York, Connecticut, Delaware, Florida, Georgia, New Hampshire, New Jersey, Pennsylvania, Virginia, and Washington, D.C.—have inclusive FIFO rules allowing *foreign lawyers* to participate in ICAs that are locally seated in those states.³⁸

In comparison to the United States regime, fifty-three out of fifty-five surveyed countries—including popular seats located in England, France, Germany, Hong Kong, Singapore—have inclusive FIFO rules allowing foreign attorneys to represent clients in ICAs seated in their jurisdictions.³⁹ This suggests that parties deciding which arbitral seat to select for their dispute may look to the legal representation FIFO rules governing a potential seat of ICA in order to determine if their attorneys could represent them in a foreign-based ICA. The parties may find it important to have the freedom to choose an attorney from their home country because of familiarity in language and culture, rather than find an attorney in the jurisdiction of the arbitral seat. The complicated interaction of the laws and legal representation rules governing California-based ICAs is helpful to understanding why parties select or avoid California as a seat of arbitration.

³¹ BORN, *supra* note 28, at 2840.

³² *Id.*

³³ Victoria Vlahoyiannis, *The Reality of International Commercial Arbitration in California*, 86 HASTINGS L.J. 909, 918 (2017). The CIACA is codified in Title 9.3 of the California Code of Civil Procedure. See CAL. CIV. PROC. CODE § 1297.11 et seq.

³⁴ Eric Z. Chang, *Golden Opportunities for the Golden State: The Rise of International Arbitration in California*, 31 CAL. LIT. 27, 28 (2018).

³⁵ *Id.* at 29.

³⁶ See discussion *supra* Section I.

³⁷ BORN, *supra* note 28, at 2841.

³⁸ *Id.* at 2842–43.

³⁹ KOLKEY ET AL., *supra* note 9, at 19.

iii. Importance of the Arbitral Seat in the Outcome of an ICA

Scholars have noted that the selection of the arbitral seat can have practical and legal consequences that significantly affect the outcome.⁴⁰ The *seat of arbitration* is the legal location of the arbitration, meaning it is the jurisdiction where an arbitration legally takes place and where the award is formally made.⁴¹ In contrast, the *venue of arbitration* is the physical location where the arbitral proceedings occur.⁴² Although parties often choose the same legal and physical location, only the seat determines the legal framework of that arbitration.⁴³ The seat selection affects crucial arbitration-related issues, such as international enforceability of arbitral awards, the courts that have supervisory jurisdiction over the arbitration, and arbitration costs.⁴⁴ Selecting a seat in a country that is not a signatory to the New York Convention could impede the recognition and enforcement of the award in a different country.⁴⁵ International enforceability is one of the most important factors for parties in deciding whether to submit a particular dispute to arbitration, particularly in the ICA field.⁴⁶ Further, the seat selection determines which courts have jurisdiction over the arbitration.⁴⁷ This is extremely relevant to the parties because a losing party disappointed in the award can only request the supervisory court at the seat of arbitration to annul the award.⁴⁸ Practically, the arbitral seat selection can influence arbitration costs, including hotels, transportation, visa requirements, arbitral hearing facilities, and support staff.⁴⁹ Thus, parties are careful in selecting the arbitral seat.⁵⁰

Due to the importance of the arbitral seat, parties have autonomy to designate the arbitral seat in their agreements to arbitrate.⁵¹ As of 2018, the five most preferred seats of arbitration are respectively London, Paris, Singapore, Hong Kong, and

⁴⁰ Vial, *supra* note 3, at 331.

⁴¹ *Id.* at 338.

⁴² *Id.* at 331–32.

⁴³ *Id.* at 332.

⁴⁴ *Id.* at 335.

⁴⁵ *Id.* at 336.

⁴⁶ *Id.* at 336–37.

⁴⁷ *Id.* at 337.

⁴⁸ *Id.* at 338–39. The annulment of an arbitral award means the award is vacated and set aside by a judge, and it can only be requested in the arbitral seat because that is the place where the award was formally made. *Id.* at 338–339. Annulment is different from a court's refusal to recognize and enforce a foreign arbitral award because an enforcement court abroad only has the power to grant or refuse the recognition and enforcement of an award within its territory. *Id.* A losing party may request a court—which may or may not be in the place where the award was made—to refuse to recognize and enforce the arbitral award. *Id.*

⁴⁹ *Id.* at 341.

⁵⁰ *Id.* at 333. This is confirmed by a recent 2018 international arbitration survey that found the most important reasons for preferred seats were the general reputation and recognition of the seat; neutrality and impartiality of the local legal system; and national arbitration law. 2018 INTERNATIONAL ARBITRATION SURVEY, *supra* note 17, at 10.

⁵¹ BORN, *supra* note 28, at 2067.

Geneva.⁵² Among the world's top seven preferred seats of arbitration, New York comes in at sixth place and it is the only seat located within the United States.⁵³ Notably, California does not make the list.⁵⁴ Other statistics also place New York as the number one preferred arbitral seat within the United States, with California following as the third most preferred location.⁵⁵ Practitioners have argued that New York is the preferred American seat because of its arbitration-friendly laws⁵⁶ and use of third-party funding to pay for international arbitration legal fees.⁵⁷ In contrast, California's arbitration laws and its formerly strict FIFO rule have been historically viewed as hostile to ICA.⁵⁸

B. History Of ICA In California

i. *Birbrower* Decision And Impact Of California's Strict FIFO Law

Until January 1, 2019, California did not explicitly allow foreign and out-of-state attorneys to provide legal services in California-based ICAs.⁵⁹ In 1998, the California Supreme Court held in *Birbrower v. Superior Court of Santa Clara County*, 949 P.2d 1, 13 (Cal. 1998) that a New York law firm engaged in the unauthorized practice of law by providing legal services to a California-based client in preparation for a domestic arbitration located in California.⁶⁰ The California Supreme Court declined to craft an international arbitration exception to California's ban on unlicensed attorneys practicing law in California.⁶¹ The California Supreme Court relied upon section 6125 of the California Business & Professions Code, which expressly required that no person may practice law in California unless the person is an active California State Bar member.⁶² The *Birbrower* decision was broadly interpreted as establishing strict FIFO rules, including that "representing a client in arbitration is the practice of law in California, and that lawyers from foreign nations could not appear in international arbitrations in California."⁶³

In response to the *Birbrower* decision, the California legislature amended Section 1282.4 of the California Code of Civil Procedure, which allowed out-of-state attorneys to represent clients in California-based arbitrations only if the attorney

⁵² 2018 INTERNATIONAL ARBITRATION SURVEY, *supra* note 17, at 9.

⁵³ *Id.*

⁵⁴ *Id.* at 10.

⁵⁵ See Vlahoyiannis, *supra* note 33, at 927.

⁵⁶ *Id.* at 927–28.

⁵⁷ Alexandra Dosman, *Is Third-Party Funding Responsible for N.Y.'s Thriving International Arbitration Market?*, 260 N.Y.L.J. 4 (Sept. 25, 2018).

⁵⁸ KOLKEY ET AL., *supra* note 9, at 18.

⁵⁹ See Chernick & Miller, *supra* note 10; CAL. CODE BUS. & PROF. CODE § 6125 (West 2019).

⁶⁰ BORN, *supra* note 28, at 2843; see *Birbrower v. Sup. Ct. of Santa Clara Cty.*, 949 P.2d 1, 13 (Cal. 1998).

⁶¹ BORN, *supra* note 28, at 2843.

⁶² Chernick & Miller, *supra* note 10; see CAL. BUS. & PROF. CODE § 6125 (West 1939).

⁶³ Chernick & Miller, *supra* note 10.

satisfied several requirements.⁶⁴ Further, the California Supreme Court adopted Rule 9.43 of the California Rules of Court, which defined an “out-of-state attorney arbitration counsel” as an attorney who is a member in good standing and eligible to practice before the bar of any United States court, and who has been retained to appear in any arbitration within California.⁶⁵ Thus, the literal terms of California’s case law and rules prohibited legal representation by foreign counsel in California-based international arbitrations.⁶⁶

The effect of the *Birbrower* decision and the subsequent legislation resulted in foreign parties to international commercial agreements and their foreign attorneys often selecting arbitral seats outside of California that had FIFO rules allowing foreign legal representation.⁶⁷ Critics of California’s strict FIFO rule argued that California has been a disfavored jurisdiction for ICAs.⁶⁸ Those critics argued that practitioners of foreign international arbitrations were hesitant to agree to holding international arbitrations in California, since those foreign attorneys would not be able to participate in those California-based ICAs.⁶⁹ Instead, foreign lawyers and parties generally chose to seat their arbitrations in international cities, such as Singapore, Hong Kong, Beijing, Shanghai, London, Munich, and domestic cities, such as New York and Florida, because those jurisdictions allow foreign lawyers to appear in international arbitrations.⁷⁰ As a consequence, despite California’s robust and internationally oriented economy, California is not a hub of ICA as would be expected of a state that has a large concentration of large companies and industries such as technology and commerce.⁷¹ Amidst criticisms that California was missing out on the lucrative international arbitration business,⁷² the California Supreme Court inquired into the feasibility of a more inclusive FIFO rule, which will be discussed in the next section.⁷³

ii. Proposals For California To Adopt An Inclusive FIFO Law

The California Supreme Court formed the Supreme Court International Commercial Arbitration Working Group (the “Working Group”) on February 10, 2017 and tasked the Working Group with addressing whether foreign and out-of-

⁶⁴ See CAL. CIV. PROC. CODE § 1282.4 (West 1998). These requirements included the non-California attorney listing an active California State Bar member as the attorney of record, filing a certificate of specified information with all interested parties to the arbitration, and getting the arbitrator’s approval to appear in the arbitration. *Id.*

⁶⁵ CAL. CT. R. 9.43.

⁶⁶ BORN, *supra* note 28, at 2844.

⁶⁷ Chernick & Miller, *supra* note 10.

⁶⁸ See, e.g., Byrne, *supra* note 14; Chernick & Miller, *supra* note 10.

⁶⁹ Chernick & Miller, *supra* note 10.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See *id.*

⁷³ See *id.*

state attorneys should be authorized to represent parties in ICAs held in California.⁷⁴ This subsection will discuss the Working Group's proposals regarding the feasibility of eliminating the ban on foreign and out-of-state legal representation in ICAs based in California.

The Working Group joined critics of California's strict FIFO law, noting that this prohibition deters foreign and out-of-state parties from choosing California as a neutral venue to arbitrate international commercial disputes since the parties cannot be represented by its regular law firms.⁷⁵ The Working Group argued that this barrier adversely affects California businesses and parties in three ways.⁷⁶ First, California residents undertake greater costs of arbitrating in a foreign jurisdiction and are less protected because their dispute and choice to apply California law may be decided by non-California arbitrators in a non-California jurisdiction.⁷⁷ Second, less foreign parties choose California as the seat of ICA, which handicaps the local economy, including the travel, restaurant, and retail industries.⁷⁸ Finally, this barrier negatively impacted California's legal industry since usually local counsel is retained in the jurisdiction where the international arbitration is held, which leaves out California attorneys.⁷⁹

In light of these disadvantages, the Working Group strongly recommended that California should join the thirteen United States jurisdictions and many foreign jurisdictions that allow foreign and out-of-state attorneys to serve as legal representation in ICAs.⁸⁰ It provided three proposals for authorizing non-California attorneys, while maintaining the Court's interest in safeguarding the competent practice of law in California.⁸¹ These proposals suggested statutory language for California Code of Civil Procedure § 1297.18, which is part of California's international arbitration statute CIACA that governs ICAs conducted in California.⁸²

The first proposal entitled Proposal 1 based the authorization of foreign and out-of-state attorneys to practice law in California on the ABA's Model Rule For Temporary Practice By Foreign Lawyers.⁸³ Under Proposal 1, "the foreign attorney must be a member in good standing of a recognized legal profession in the attorney's home country," "must be subject to effective regulation and discipline by a body or

⁷⁴ *Supreme Court Appoints International Commercial Arbitration Working Group*, CAL. CTS. NEWSROOM (Feb. 10, 2017), <https://newsroom.courts.ca.gov/news/releases-20170210>.

⁷⁵ *See* KOLKEY ET AL., *supra* note 9, at 39.

⁷⁶ *See id.* at 39.

⁷⁷ *See id.* at 39–40.

⁷⁸ *See id.* at 40. This is in contrast to other states that attempt to attract the international arbitration business to their states, such as New York and Florida. *Id.*

⁷⁹ *See id.* at 17–18.

⁸⁰ *See id.* at 40. The Working Group highlighted that the domestic jurisdictions that do not have strict FIFO rules include New York, Florida, Illinois, Texas, and the District of Columbia, and the foreign jurisdictions include Great Britain, France, Italy, Switzerland, and Hong Kong. *Id.*

⁸¹ *See id.* at 22.

⁸² *See id.* at 23, 30, 34.

⁸³ *See id.* at 23.

public authority of that jurisdiction,” and “must be in good standing in every jurisdiction where admitted to practice.”⁸⁴ Based on that eligibility to be a qualified, foreign and out-of-state attorneys may provide legal services in connection with an ICA under four circumstances:

(1) the services are undertaken in an association with an attorney who is admitted to practice in California *and who actively participates* in the matter; (2) the services are reasonably related to the attorney’s practice in the jurisdiction where the attorney is admitted to practice; (3) the services (i) are either performed for a client who resides or has an office in a jurisdiction where the attorney is admitted to practice, or (ii) are reasonably related to a matter that has a substantial connection to a jurisdiction where the attorney is admitted; or (4) the services arise out of a dispute governed primarily by *international law or the law of a jurisdiction other than California*.⁸⁵ Although the Working Group recognized that this stricter authorization regime may continue parties’ preferences to not select California as an arbitral seat, it unanimously recommended Proposal 1 as the best solution because the proposal best preserved the California Supreme Court and the State Bar’s interests in protecting California-based parties.⁸⁶

The Working Group also supported Proposal 2, which based authorization for foreign and out-of-state attorney representation on the New York Rule.⁸⁷ However, this proposal was not optimal because the language in the ABA Model Rule is clearer and more welcoming than the New York Rule and added extra grounds for the foreign or out-of-state attorney to participate in the international commercial arbitration.⁸⁸

Proposal 3 based authorization for foreign and out-of-state attorney representation on a streamlined version of the California Code of Civil Procedure § 1282.4, which authorizes United States out-of-state attorneys to participate in domestic arbitrations in California according to a temporary *pro hac vice* process.⁸⁹ But this proposal did not extend authorization to foreign attorneys.⁹⁰ For that reason, the Working Group viewed Proposal 3 as a viable option but would not encourage foreign parties and their attorneys to select California as the ICA seat.⁹¹

In response to the Working Group’s proposals, the California Supreme Court also recommended Proposal 1 because it protected California’s interest of ensuring the competent practice of law by ensuring that disputes with unsophisticated parties are excluded from the statute’s scope, that foreign and out-of-state attorneys can only appear in those arbitrations subject to the laws and disciplinary authority of

⁸⁴ See *id.* at 25.

⁸⁵ See *id.* at 25.

⁸⁶ *Id.* at 3, 23.

⁸⁷ *Id.* at 23.

⁸⁸ *Id.* at 33.

⁸⁹ *Id.* at 34, 36.

⁹⁰ *Id.* at 36.

⁹¹ *Id.* at 23.

California, and that the California State Bar reports to the court any complaints involving these attorneys.⁹² Thus, both the California Supreme Court and its Working Group concluded it was feasible to replace the restrictive FIFO rule with a more inclusive rule that would explicitly authorize qualified foreign and out-of-state attorneys to provide legal services in California-based ICAs.⁹³

iii. Passage And Recent Impact Of California Senate Bill 766

As a result, the Working Group's Proposal 1 was drafted as California Senate Bill 766 (SB 766).⁹⁴ The California Legislature unanimously passed SB 766, and the governor signed the bill into law.⁹⁵ SB 766 amended California's international arbitration statute (CIACA) and is codified at Sections 1297.186 through 1297.189 of the California Code of Civil Procedure.⁹⁶ SB 766's purpose was to allow California to compete with other jurisdictions as a seat of commercial arbitration and "showcase that jurisdiction's local economy, including its hospitality, restaurant and legal industries."⁹⁷

Although SB 766 only took effect on January 1, 2019, there has already been recent movement that is taking place in California in the wake of its passing. SB 776 was hailed as "one of the most inclusive FIFO rules" in the world because it allows foreign attorneys to appear in California-seated ICAs if any of the five broad conditions are met.⁹⁸ JAMS, the largest private provider of arbitration and mediation services in the world, is opening an international arbitration center in Los Angeles due to the passage of SB 766 in anticipation that California will be a feasible new choice of seat for international arbitrations.⁹⁹ The Silicon Valley Arbitration and Mediation Center ("SVAMC") noted that SB 766 would be significant for arbitrations involving technology, because California is the home to leading technology industry players, such as Google, Apple, and Facebook.¹⁰⁰ Richard Eastman, an arbitrator and SVAMC member, opined that SB 766 would give "technology companies and other companies doing international business an

⁹² *Court Working Group Recommends Proposal for International Commercial Arbitration*, CAL. CTS. NEWSROOM (Apr. 25, 2017), <https://newsroom.courts.ca.gov/news/court-working-group-recommends-proposal-for-international-commercial-arbitration>.

⁹³ See KOLKEY ET AL., *supra* note 9, at 3; *Court Working Group Recommends Proposal for International Commercial Arbitration*, *supra* note 92.

⁹⁴ Chernick & Miller, *supra* note 10.

⁹⁵ See S.B. 766, 2017–2018 Leg. (Cal. 2018).

⁹⁶ CAL. CIV. PROC. CODE. §§ 1297.186–1297.189 (West 2018).

⁹⁷ Comment, S.B. 766 S. Judiciary Comm., 2017–2018 Leg., at 5 (Jan. 8, 2018).

⁹⁸ Chang, *supra* note 34, at 32.

⁹⁹ *JAMS to Open International Arbitration Centers in Los Angeles and New York*, JAMS (July 10, 2018), <https://www.jamsadr.com/news/2018/jams-to-open-international-arbitration-centers-in-los-angeles-and-new-york>.

¹⁰⁰ *SVAMC 2018 Legislation Report*, SILICON VALLEY ARB. & MEDIATION CTR., <https://mailchi.mp/svamac/svamac-fall-newsletter-2018> (last visited Feb. 17, 2019).

improved opportunity for resolving disputes in California.”¹⁰¹ In light of SB 766’s passage, California international arbitration practitioners created the newly-formed California International Arbitration Council (“CIAC”),¹⁰² a non-profit organization to promote “international arbitration in California through educational, promotional, and organizational initiatives and programs.”¹⁰³ However, CIAC has not yet published the details of such initiatives and programs.¹⁰⁴ Overall, the international arbitration community has praised SB 766 as shifting California towards a more arbitration-friendly stance.¹⁰⁵

III. BENEFITS OF INCREASING CALIFORNIA-BASED ICAS

Proponents of increasing ICAs seated in California have cited to the general benefits that are applicable to most ICAs and to the benefits that California itself would reap.¹⁰⁶ This section shall discuss a few of the advantages that California and its businesses and residents would experience if there were more arbitration of international commercial disputes conducted in California.

A. *Advantages Of Using ICAs To Resolve International Commercial Disputes Instead Of National Courts*

i. International Enforcement of Arbitral Awards

A main reason that disputing parties choose ICA over an established court of law is the international enforceability of the arbitral award.¹⁰⁷ Many arbitration practitioners agree that “it is easier to enforce an international arbitration award overseas than a U.S. judgement.”¹⁰⁸ The arbitral award is a *binding* decision on the parties that they must accept, as it is not simply a recommendation that the parties can choose to accept or reject.¹⁰⁹ The arbitral award is also *final*, meaning that it will not be subject to an expensive appellate process as in court judgments.¹¹⁰ Most importantly, an arbitral award rendered in a country that is a signatory to an international treaty, such as the New York Convention, is directly enforceable by

¹⁰¹ Richard Eastman, *California Considers Strengthening International Arbitration Law – Will Benefit Tech Companies*, SILICON VALLEY ARB. & MEDIATION CTR. NEWS, <https://svamc.org/california-considers-strengthening-international-arbitration-law-will-benefit-tech-companies/> (last visited Feb. 17, 2019).

¹⁰² *SVMAC 2018 Legislation Report*, *supra* note 100. Several SVAMC members are CIAC directors. *Id.*

¹⁰³ *About Us*, CAL. INT’L ARB. COUNCIL, <https://ciac.us/about-us/> (last visited Feb. 17, 2019).

¹⁰⁴ *See id.*

¹⁰⁵ *See, e.g.*, Holiner & Hooper, *supra* note 2.

¹⁰⁶ *See, e.g.*, Chernick & Miller, *supra* note 10.

¹⁰⁷ BLACKABY ET AL., *supra* note 20, at 29.

¹⁰⁸ *See id.* at 11.

¹⁰⁹ *Id.* at 29.

¹¹⁰ *Id.*

courts nationally and internationally.¹¹¹ This international enforceability of the arbitral award is advantageous to parties because arbitral awards have greater acceptance in the international arena than do treaties for the reciprocal enforcement of court judgments across jurisdictions.¹¹² A winning party seeking to enforce an award will often seek a court's enforcement in the location where the losing party has the most assets because that is where the winning party has the best chance at recovering the full amount of the award from the losing party.¹¹³ Because California is the world's fifth largest economy and home to fifty-three Fortune 500 companies, a foreign party is very likely to seek enforcement of an arbitral award from a losing party that has a substantial amount of business assets in California.¹¹⁴

ii. Party Autonomy is a Core Principle in Arbitration

An arbitration has the advantage of being able to be tailored to the specific dispute, which provides flexibility and autonomy to the parties in terms of procedural freedom.¹¹⁵ This allows the parties to select arbitrators that are experienced in the subject matter of the dispute or their industry and save time and money, and to be able to receive a sensible award that is congruent with their dispute.¹¹⁶

iii. Party's Ability to Avoid Litigation In U.S. Courts

Many foreign parties choose ICA to resolve their commercial disputes over litigation in U.S. courts in order to avoid trial by jury, public access to the dispute in courts, expensive discovery, and punitive damages.¹¹⁷

iv. Neutrality and Expertise Of Arbitrators

Parties that agree to resolve future or existing international commercial disputes through ICA usually intend for the dispute to be decided in a neutral seat of arbitration by expert arbitrators, thereby avoiding the home jurisdiction of either of the parties.¹¹⁸ Not conducting an ICA proceeding in the home ground of one of the parties prevents one party from getting a home advantage.¹¹⁹ The arbitrators are

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Vlahoyiannis, *supra* note 33, at 926.

¹¹⁴ *Id.*

¹¹⁵ BLACKABY ET AL., *supra* note 20, at 30.

¹¹⁶ *Id.*

¹¹⁷ ARBITRATION GUIDE: UNITED STATES, INT'L BAR ASS'N ARBITRATION COMM., 23 (2018).

¹¹⁸ *See* BLACKABY ET AL., *supra* note 20, at 29.

¹¹⁹ *See also id.*

impliedly neutral, meaning they are “independent and impartial.”¹²⁰ If the tribunal consists of one arbitrator, then the arbitration will be chosen by the parties’ mutual agreement.¹²¹ If the tribunal consists of three arbitrators, then each side can choose one of the arbitrators with procedures in place for raising objections.¹²² Parties may prefer the choice of selecting their arbitrators who they can ensure will have expertise in the industry of the dispute instead of risking an unknown judge in a foreign country deciding their dispute.¹²³

v. Confidentiality And Privacy Of The ICA Proceeding

Many businesses and their lawyers are attracted to the privacy and confidentiality that can be present in arbitral proceedings.¹²⁴ For example, parties may want to protect their trade secrets and competitive practices.¹²⁵ Parties may also want to keep the details of a commercial dispute private and avoid negative publicity.¹²⁶ Unlike litigation, parties can obtain a confidentiality order from the tribunal that protects the confidentiality of the arbitral proceedings, documents and materials used in the proceedings, and resulting award.¹²⁷

B. More ICAs in California Would Positively Impact California’s International Legal Industry and Economy

An increase of ICAs seated in California has the potential to improve California’s legal industry and economy. The *Economist* reported that New York-based international arbitrations yielded “more than 1 billion dollars in annual fees to New York law firms,” not including ancillary revenue resulting to hotels, restaurants, and other supporting businesses.¹²⁸ Another survey concluded that the average international arbitration proceeding generates approximately two million in legal fees and tens of thousands of dollars in ancillary revenue for “hearing venue fees, translators, transcripts and accommodations.”¹²⁹ However, California has not begun to reach its potential as a major ICA center, despite its internationally oriented economy.¹³⁰ California is also a large player in international trade and investment, as

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ See generally *id.*

¹²⁴ *Id.* at 30.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ ARBITRATION GUIDE: UNITED STATES, *supra* note 117, at 12.

¹²⁸ Chernick & Miller, *supra* note 10.

¹²⁹ *Golden Opportunities for the Golden State*, *supra* note 34, at 28.

¹³⁰ Chernick & Miller, *supra* note 10.

an exporter to over 225 foreign markets.¹³¹ International-related commerce makes up approximately one-quarter of California's economy.¹³² Nationally, California accounts for eleven percent of all United States exports due to its advanced manufacturing and trade infrastructure.¹³³ Thus, California should capitalize on its position as the world's fifth largest economy and home to fifty-three Fortune 500 companies¹³⁴ by hosting more international arbitration proceedings in order to share in the substantial economic benefits flowing from the international legal industry.

IV. PROPOSED INITIATIVES

California is missing out on the international arbitration business,¹³⁵ but can undertake thoughtful, multifaceted initiatives to attract more ICAs to the state. This section shall explore the recommended initiatives that can be implemented, such as a physical facility to house the arbitrations, implementing third-party funding to finance arbitration costs, and hosting the ICCA Congress in Los Angeles or San Francisco.

A. *Physical ICA Hearing Center Facility in California*

As previously discussed, parties carefully select the arbitral seat in part because of its effect on arbitration costs, including hotels, transportation, arbitral hearing facilities, and support staff.¹³⁶ Given California's well-developed hospitality industry and geographically convenient position on the Pacific Rim, California can promote itself as an arbitral seat with an easily accessible, well-maintained physical facility to house the arbitration proceedings. California can take lessons from organizations in New York and Atlanta. The New York International Arbitration Center ("NYIAC") is a non-profit organization that offers hearing rooms for international arbitrations and develops promotional materials about international arbitration in New York.¹³⁷ Unlike private arbitration providers such as JAMS, the NYIAC "does not administer arbitrations or public arbitration rules."¹³⁸ NYIAC simply provides physical hearing facilities to rent in Manhattan, New York for

¹³¹ *International Affairs, CAL. CHAMBER ADVOCACY*, <https://www.jamsadr.com/files/uploads/documents/articles/richard-chernick-howard-miller-dailyjournal-california-missing-out-on-international-arbitration-business-2018-02-09.pdf> (last visited Feb. 17, 2019).

¹³² *Id.*

¹³³ Susanne T. Stirling, *International Forum: California Continues to Blaze Trail in Trade*, CALCHAMBER ADVOCACY (May 29, 2018), <https://advocacy.calchamber.com/2018/05/29/international-forum-california-continues-to-blaze-trail-in-trade/>.

¹³⁴ See Vlahoyiannis, *supra* note 33, at 926.

¹³⁵ See Chernick & Miller, *supra* note 10.

¹³⁶ Vial, *supra* note 3, at 333.

¹³⁷ *About NYIAC*, N.Y. INT'L ARB. CTR., <https://nyiac.org/about> (last visited Feb. 17, 2019).

¹³⁸ *Id.*

arbitration.¹³⁹ NYIAC was established in 2013 after a recommendation from a New York State Bar Association task force, and became more visible after partnering with the state's bar association and more than thirty-seven leading commercial New York law firms.¹⁴⁰ The center's hearing space features translation booths and other technology to support international arbitrations, as well as on-site staffing support.¹⁴¹ Today, New York is the most popular arbitral seat within the United States.¹⁴²

The Georgia State University Law Center for Arbitration and Mediation (previously named the Atlanta Center for International Arbitration and Mediation ("ACIAM")) offers a state-of-the-art facility for hearings in downtown Atlanta.¹⁴³ This center provides concierge services and discounted rates to its partner institutions such as the International Center for Dispute Resolution, JAMS, and the International Institute for Conflict Prevention and Resolution.¹⁴⁴

California can learn from the NYIAC and Georgia State University Law Center for Arbitration and Mediation models by having a dedicated physical facility center for ICA proceedings that is run by a non-profit organization such as NYIAC.¹⁴⁵ The facilities can be based in Los Angeles, as to capitalize on Los Angeles's geographic location on the Pacific Rim and easily accessible international transportation and hospitality hub. Having a non-profit organization may be a better option than a for-profit arbitration provider such as JAMS, since the focus of the organization should be to provide hearing rooms for international arbitrations, and to develop promotional materials about California's arbitration laws in order to persuade parties to bring their international arbitration disputes to California.

Similar to the NYIAC model, the center should not administer arbitrations or public arbitration rules and should instead focus on creating an ideal facility with services for ICA proceedings, such as translation booths for the international demographic or digital displays for exhibits.¹⁴⁶ The organization can promote the reasons why parties should choose to arbitrate their international commercial disputes in California and provide compelling information as to why California law should be the governing law for parties' commercial transactions contracts. The center can also provide concierge services to service all of the parties' needs, such as transportation and hotel accommodations, as well as on-site support staff to assist in the arbitral proceedings.

¹³⁹ *Id.*

¹⁴⁰ Brian Farkas & Marie Cassard, *New York: A New Home of International Arbitration?*, 40 LITIG. 45, 46-47 (2014).

¹⁴¹ *NYIAC Brochure: Premier Hearing Space in the Heart of Manhattan*, N.Y. INT'L ARB. CTR., <https://nyiac.org/nyiac-core/wp-content/uploads/2013/06/NYIAC-Brochure.pdf>.

¹⁴² Vlahoyiannis, *supra* note 33, at 927.

¹⁴³ *Arbitration & Mediation Spaces*, GA. ST. U. L. CTR. FOR ARB. & MEDIATION, <https://law.gsu.edu/about/guest-event-services/#Arbitration> (last visited Oct. 21, 2019).

¹⁴⁴ Meredith Hobbs, *GSU's International Arbitration Center Expands Scope*, LAW.COM (July 1, 2019), <https://www.law.com/dailyreportonline/2019/07/01/gsus-international-arbitration-center-expands-scope/>.

¹⁴⁵ *See About NYIAC*, *supra* note 137.

¹⁴⁶ *See id.*; *NYIAC Brochure*, *supra* note 141.

Akin to the Georgia State University Law Center for Arbitration and Mediation model, the California organization can partner with and offer discounted rates to arbitral institutions in an effort to provide a neutral hearing facility to those institutions.¹⁴⁷ Having a well-maintained and technologically advanced hearing center in Los Angeles to house ICA proceedings will create a central hub that will help establish Los Angeles and California as a center of ICA.

A potential criticism to this initiative would be the upfront capital costs in building such a physical center and the variety of arbitration institutions such as JAMS and ICRD that already have hearing facilities in Los Angeles and San Francisco. However, having a non-profit organization that is tasked only with the facility space and not administering the arbitrations would help maintain the center's reputation as neutral and not-for-profit. Further, an organization that is able to clearly and succinctly delineate the benefits of choosing California law to govern international commercial transactions, and/or selecting California as the arbitral seat in international commercial disputes will provide a central promotional means to persuade attorneys and parties that California is a smart choice for an arbitral seat.

B. Implementation Of Third-Party Funding To California-Based ICAs

Another initiative that may attract more ICAs to California is the implementation of third-party funding to finance arbitration costs incurred by parties to ICAs. International arbitration practitioners continue to consider cost as arbitration's worst feature.¹⁴⁸ Third-party funding can finance the arbitration and combat the immense costs of the proceedings. Third-party funding is the provision of funds by a person or entity that is not a party to the arbitration.¹⁴⁹ The funding often covers a party's attorney's fees, expert and miscellaneous expenses, and an indemnity against liability for adverse costs.¹⁵⁰ In return, the third-party funder receives a negotiated share of any recovery on the claim.¹⁵¹ If the arbitrated claim is unsuccessful, the funder loses its investment.¹⁵² Third-party funding arrangements have become increasingly used by sophisticated, multinational companies in order to manage legal budgets and spending.¹⁵³ Funders typically include venture capital funds, bank affiliates, commercial providers, and publicly listed companies.¹⁵⁴

Third-party funding has become such a popular tool in international arbitrations that leading international law firm Baker McKenzie chose funding as its special topic

¹⁴⁷ See Hobbs, *supra* note 144.

¹⁴⁸ 2018 INTERNATIONAL ARBITRATION SURVEY, *supra* note 17, at 5.

¹⁴⁹ IBA REGIONAL PERSPECTIVES, *supra* note 5, at 17.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Dosman, *supra* note 57, at 2.

¹⁵³ BAKER MCKENZIE, THE BAKER MCKENZIE INTERNATIONAL ARBITRATION YEARBOOK 376 (11th ed. 2018).

¹⁵⁴ IBA REGIONAL PERSPECTIVES, *supra* note 5, at 17.

for its 2017–2018 International Arbitration Yearbook.¹⁵⁵ A 2018 survey found that 88% of international arbitration practitioners perceived third-party funding of claimants in international arbitration as neutral or positive.¹⁵⁶ Alexandra Dosman, managing director at Vannin Capital, argues that this use of funding is partly responsible for New York’s prosperous international arbitration market, which is the most popular seat in the United States.¹⁵⁷ England and Wales approved commercially-motivated litigation funding because it promotes access to justice,¹⁵⁸ and it clearly paid off—London is the most popular seat for international arbitration in the world.¹⁵⁹ In contrast, Ireland’s prohibition on professional third-party funding is viewed as a potential barrier to Dublin’s growth as an international arbitration center.¹⁶⁰ Singapore’s legislature in 2017 expressly authorized third parties to fund international arbitration proceedings in Singapore, and Singapore is the third most popular seat of international arbitration.¹⁶¹ In December 2018, Hong Kong announced its arbitration laws would permit third-party funding in arbitrations, leading commentators to predict that there will be more future arbitrations in Hong Kong due to the funded party having a reduced financial risk when pursuing a claim through arbitration.¹⁶²

Despite third-party funding being utilized by popular ICA jurisdictions and promoting access to arbitration, critics of third-party funding argue that it raises conflict-of-interest issues, including affecting the attorney-client relationship with the funded client and whether the funding should be disclosed.¹⁶³ However, the California Rules of Professional Conduct addresses these concerns by requiring lawyers that accept legal fees from a third-party to abide by three duties to: (1) exercise independent professional judgment, (2) preserve the attorney-client relationship, and (3) preserve the client’s confidential information.¹⁶⁴

Attorneys that advise their clients as to the benefits of third-party funding and the increased use of this fee arrangement to finance California-based ICAs would incentivize companies to select California as the location to arbitrate their

¹⁵⁵ BAKER MCKENZIE, *supra* note 153, at 1.

¹⁵⁶ 2018 INTERNATIONAL ARBITRATION SURVEY, *supra* note 17, at 25.

¹⁵⁷ Dosman, *supra* note 57, at 2; see Vlahoyiannis, *supra* note 33, at 927.

¹⁵⁸ Jessica Lacey, *Third-Party Funding in International Arbitration: The Irish Perspective*, 18 U. C. DUBLIN L. REV. 1, 17 (2018).

¹⁵⁹ 2018 INTERNATIONAL ARBITRATION SURVEY, *supra* note 17, at 9.

¹⁶⁰ Lacey, *supra* note 158, at 2.

¹⁶¹ 2018 INTERNATIONAL ARBITRATION SURVEY, *supra* note 17, at 9; Oliver Gayner & Susanna Khouri, *Singapore and Hong Kong: International Arbitration Meets Third Party Funding*, 40 FORDHAM INT’L L.J. 1033, 1033-34 (2017).

¹⁶² Gary Seib et al., *Arbitration in Hong Kong – Third Party Funding Takes Effect*, GLOBAL ARB. NEWS (Dec. 17, 2018), <https://globalarbitrationnews.com/arbitration-in-hong-kong-third-party-funding-takes-effect>.

¹⁶³ BORN, *supra* note 28, at 2867–68. For instance, a funder may demand control over the selection of legal counsel and case strategy and management, which influences the attorney-client relationship. BORN, *supra* note 28, at 2868.

¹⁶⁴ Eric Z. Chang, *State of California*, in HANDBOOK ON THIRD-PARTY FUNDING IN INTERNATIONAL ARBITRATION 479, 493-94 (Nikolaus Pitkowicz ed., 2018) [hereinafter *State of California*].

commercial disputes because third-party funding alleviates commercial parties' main complaint of the immense legal costs of arbitrating international disputes. Although large-scale third-party funding is new in California, it is rapidly increasing in use due to lack of regulations and common law barriers.¹⁶⁵ California already has a number of international and local funders, including "Burford Capital, Bentham IMF, Vannin Capital, Longford Capital Management, Fulbrook Capital Management, Vinson Resolution Management, and Prometheus Law."¹⁶⁶ Further, the California Supreme Court has supported the use of third-party funding for meritorious claims, citing public policy reasons.¹⁶⁷ This state infrastructure in support of third-party funding ensures that parties that do not have the desire or ability to self-fund arbitration proceedings are given access to justice. Therefore, California should join other jurisdictions, such as New York, England and Wales, Singapore, and Hong Kong that have successfully benefitted from the positive effects of third-party funding on international arbitrations.¹⁶⁸

C. *Hosting the ICCA Congress in California*

California can increase its visibility as an ICA center by bidding to host the International Council for Commercial Arbitration ("ICCA") Congress that takes place every two years. The ICCA is an international non-governmental organization dedicated to promoting the use of and improving arbitration and other processes of resolving international commercial disputes.¹⁶⁹ The ICCA Congress is the largest regular international arbitration conference and attracts many international dispute resolution participants looking for stimulating discussion and insight on international arbitration matters.¹⁷⁰ Past cities that have hosted the ICCA Congress include Sydney, Miami, Singapore, Geneva, Beijing, London, Paris, and New York.¹⁷¹ The bidding schedule to host the 2024 ICCA Congress opens in December 2019.¹⁷² A challenge with this initiative is the costs associated with hosting the weeklong congress. A potential solution would be to arrange sponsorships with leading local arbitral institutions, such as the International Centre for Dispute Resolution ("ICDR") and JAMS, and with local international arbitration firms, such as White & Case LLP and Baker McKenzie LLP. A sponsorship would increase the visibility of

¹⁶⁵ *Id.* at 479.

¹⁶⁶ *Id.* at 480.

¹⁶⁷ *Id.* at 481.

¹⁶⁸ See Gayner & Khouri, *supra* note 161, at 1033; Lacey, *supra* note 158, at 17; Dosman, *supra* note 57, at 4; Seib, et al., *supra* note 162.

¹⁶⁹ *About the International Council for Commercial Arbitration*, INT'L COUNCIL FOR COM. ARB. (Feb. 17, 2019), <https://www.arbitration-icca.org/about.html>.

¹⁷⁰ *Congresses*, INT'L COUNCIL FOR COM. ARB. (Feb. 17, 2019), <https://www.arbitration-icca.org/conferences-and-congresses.html>.

¹⁷¹ *Congress Series*, INT'L COUNCIL FOR COM. ARB. (Feb. 17, 2019), https://www.arbitration-icca.org/publications/congress_series_table_of_contents.html.

¹⁷² *Congresses*, *supra* note 170.

all sponsors involved and provide capital to fund the congress. Ultimately, having either Los Angeles or San Francisco host the 2024 ICCA Congress would be a remarkable opportunity for California to showcase its development as an arbitration-friendly jurisdiction, and its already existing infrastructure that makes it the ideal venue to host ICAs.

IV. CONCLUSION

California's passage of Senate Bill 766 signaled to the international arbitration community that California's golden gates are open to hosting ICAs.¹⁷³ However, California's history of being hostile towards ICAs will need to be rehabilitated in order for California to reach its potential as a top choice for ICAs. Parties can greatly benefit from resolving their international commercial disputes through ICA rather than through traditional court adjudication. These benefits include international enforcement of the resulting arbitral award; the autonomy of the parties to make choices such as arbitrator selection and flexibility to structure the proceeding to meet their specific needs; the neutrality of arbitrators; and the confidentiality and privacy of the ICA proceeding that would prevent the parties from experiencing adverse publicity. California's international legal industry and economy would also substantially benefit from the increased use of ICAs within the state.

As an international hub for transportation, hospitality, technology, and entertainment, California is uniquely positioned to fully unlock its potential as an internationally recognized arbitral seat for international commercial disputes. Following in the footsteps of preferred arbitral jurisdictions, California can make its name in the international arbitration community by forming a non-profit organization to promote California's rules regarding international arbitration and to create a physical facility to house the arbitrations; by implementing third-party funding to finance arbitration costs; and by hosting the ICCA Congress in Los Angeles or San Francisco. These proposed initiatives would signal to the international arbitration community that not only are California's golden gates open to ICA, but California has learned from the past experiences of other jurisdictions and will improve upon the practice of international arbitration with its hallmark ethical values. After all, Los Angeles and San Francisco already have the economical capabilities and legal infrastructure to be a prime location to host ICAs. California is ready to take its place as an internationally recognized hub of ICA.

¹⁷³ Holiner & Hooper, *supra* note 2.